



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:	)	
	)	
Kraft et al.	)	Examiner: Rhee, Jane J.
	)	
Serial No.: 09/917,360	)	Art Unit: 1745
	)	
Filed: July 27, 2001	)	Confirmation No.: 9869
	)	
For: FORMING NEW SHEET	)	Customer No.: 00112
FLOORING WIDTHS BY	)	
CONTROLLING APPLICATION	)	Docket No.: 0105
OF A BONDING AGENT	)	

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This brief is submitted in response to the Advisory Action, mailed July 21, 2005. The Examiner failed to check box 2 to indicate that a Notice of Appeal had been filed. However, a Notice of Appeal was filed on July 7, 2005, as indicated by the returned Acknowledgement Card and the PAIRS system.

Further, paragraph 7 of the Advisory Action did not indicate whether the proposed amendment, filed July 7, 2005, was entered. However, the continuation of paragraph 3 indicated that the proposed amendment had not been entered.

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REAL PARTY IN INTEREST

The real party in interest in this application is Armstrong World Industries, Inc., the assignee of the present application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, or Appellants' legal representatives, which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending Appeal.

STATUS OF CLAIMS

Claims 27, 30 to 33, 36 to 42 and 44 to 51 are rejected.

Claims 1 to 26, 28, 29, 34, 35 and 43 have been canceled.

Claim 48 is being canceled in an Amendment After Notice of Appeal, filed herewith.

Therefore, claims 27, 30 to 33, 36 to 42 and 44 to 51 are pending and claims 27, 30 to 33, 36 to 42, 44 to 47 and 49 to 51 are being appealed.

STATUS OF AMENDMENTS

The Amendment and Response After Final, filed on July 7, 2005, was not entered.

Therefore, the claims are as they appear in the November 15, 2004, amendment.

An Amendment After Notice of Appeal is being filed herewith, canceling claim 48.

### SUMMARY OF CLAIMED SUBJECT MATTER

The invention is a surface covering or a resilient flooring sheet, which includes two resilient sheet elements (10) having substantially the same structure. Each sheet element has a first major surface, a second major surface and a gluing surface interposed between the two major surfaces. An adhesive is interposed between the two sheet elements. Support is found at the Abstract, lines 8 to 12; page 1, lines 6 to 11; page 6, lines 1 to 7; Examples 1 to 4 on pages 14 to 16, particularly the first sentence of each Example; original claims 21, 25 and 28; and Figure 2.

In claims 27, 38, 40 and 46, a seamless resilient wear layer covers substantially the entire surface covering, including the two elements and the seam formed by the adjacent gluing surfaces and the adhesive. Support is found at page 13, lines 14 to 20, and original claim 27.

In claims 30, 36, 37, 41 and 44, the surface covering or resilient flooring sheet is in the form of a roll. Support is found at page 1, lines 6 and 7; page 2, lines 2 to 7; page 3, lines 1 to 3; page 13, lines 11 and 12; page 14, lines 16 and 17; page 15, lines 5, 25 and 26; page 15, lines 15 and 16; and original claim 30.

In claims 31 to 33, the adhesive is required to be a radiation-curable adhesive, a UV-curable adhesive or acryanoacrylate. Support is found at page 8, lines 1 to 6; page 12, lines 21 and 22; page 13, lines 4 to 7; and original claims 22 to 24 and 31 to 33.

In claims 37, 39, 42 and 45, the gluing surfaces and adhesive form a scarf joint. Support is found at page 10, line 26, to page 11, line 2, and Figure 1B.

In claim 44, the seam is in a plane generally parallel to the axis of the roll. Support is found at page 10, line 26, to page 11, line 2, and page 14, lines 16 and 17. When the seams run the width of the roll, the seam is in a plane generally parallel to the axis of the roll.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 27, 36, and 48 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 27, 30, 36 to 42 and 44 to 51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over MacLaine et al. US Patent No. 3,615,994 (MacLaine) and Webster's New World Dictionary in view of Pacione US Patent No. 6,298,625 (Pacione).

Claims 31 to 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over MacLaine and Webster's New World Dictionary and in further view of Ehrhart et al. US Patent No. 5,140,088 (Ehrhart).



### ARGUMENT

In the Advisory Action mailed from the U. S. Patent and Trademark Office (PTO) on July 21, 2005, the Primary Examiner held that the proposed amendment(s) raised new issues and that applicants' arguments are not commensurate in scope with the current claims. Therefore, she has maintained the rejection of all of the pending claims for the reasons set forth in the Final Office Action, mailed February 8, 2005.

Attorney for Applicants will argue separately the patentability of claims 27, 31 to 33, 37 to 40, 42 and 44 to 46. The remaining claims stand or fall with the claims from which they depend.

#### **Rejection of claims 27, 36, and 48 under 35 U.S.C. § 112, second paragraph.**

Claims 27, 36 and 48 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that claim 48, which depends on claim 36, contradicts claim 36. Claim 48 has been canceled in the Amendment After Notice of Appeal, which is filed herewith. Therefore, the section 112 rejection of claims 27 and 36 should be withdrawn.

#### **Rejection of claims 27, 30, 36 to 42 and 44 to 51 under 35 U.S.C. § 103(a) as being unpatentable over MacLaine and Webster's New World Dictionary in view of Pacione.**

##### Claims 27, 38, 40 and 46

Claims 27, 38, 40 and 46 require a seamless resilient wear layer that covers substantially the entire surface covering or resilient flooring sheet, including the two elements and the seam.

Below the middle of page 5 of the Office Action mailed February 8, 2005 (“latest Office Action”), the Examiner states that

“Pacione teaches a resilient covering layer that covers the entire surface covering component, including the two elements and the seam formed by adjacent gluing surfaces and adhesive (figure 4 numbers 9, 13, 15) for the purpose of installing a decorative cover (col. 1 lines 13-17).”

However, Pacione does not teach wear layer or a covering layer that covers substantially the entire surface covering or resilient flooring sheet, including the two elements and the seam. The carpet piece 15, shown in Figure 4, covers the seam between the two adjacent elements (covering pieces 9) and one of the covering pieces 9, but it covers only a portion of the second covering piece 9 adjacent the seam and not the two adjacent elements, as required by claims 27, 38, 40 and 46.

Further, claims 27, 38, 40 and 46 require the wear layer to be seamless. At the middle of page 8 of the latest Office Action, the Examiner argues that “[a]lthough Pacione discloses that the carpet which is the wear layer comes in many pieces, the carpet pieces combined together is still one layer that covers substantially the entire surface covering including two elements and the seam formed by the adjacent gluing surfaces and adhesive.” While the carpet layer of Pacione formed by the plurality of carpet pieces 15 does cover substantially the entire surface covering, it is not seamless as required by claims 27, 38, 40 and 46.

At the top of page 9 of the latest Office Action, the Examiner argues that carpet is notoriously well known in the prior art to be a seamless, resilient wear layer and concludes that therefore Pacione does disclose a seamless, resilient wear layer, referring to Figure 4, number 15. Again, the carpet piece 15 of Figure 4 does not cover substantially all of the two adjacent covering pieces 9. The invention of Pacione is an “anchor sheet [that] acts to tie the decorative covering [carpet pieces 15] together as a functional unit.” (Column 1, lines 13 to 15.) If the

carpet pieces were substituted with a seamless carpet, the invention of Pacione would be destroyed. The pieces would not be tied together by the anchor sheet.

Further, there is no suggestion to replace the carpet piece 9 of Pacione with a seamless carpet which would cover the seam and two covering pieces 9 of the anchor sheet. If the Examiner disagrees, she respectfully requested to point out such suggestion in Pacione, as required by 37 C.F.R. 1.104(c)(2).

Still further, there is no suggestion to combine MacLaine and Pacione, since to do so would destroy the invention of MacLaine. MacLaine is directed to a cushioned vinyl sheet that can be rolled. See roll 74 in Figures 6 to 8. The wear layer 3 of MacLaine is adhered to the foamed vinyl backing 5 and backing layer 6 before the laminated strips 1, 2 are joined together in a butt joint of the MacLaine invention. See Figure 1 and column 2, lines 3 to 12. The invention of MacLaine is a product that can be produced by butt joining the edges of the cushioned vinyl strips. See column 1, lines 30 to 32. The wear layer of MacLaine is not seamless.

There is no suggestion or reason to cover the wear layer of MacLaine with the carpet of Pacione or any other decorative covering. By doing so the MacLaine wear layer no longer functions as a wear layer. It is improper for the Examiner to use hindsight reasoning to pick and choose elements of the two references to combine.

Even if hindsight reasoning were used to pick and choose the elements, the elements are not comparable. The vinyl wear layer 3 of MacLaine is adhered to the remainder of the laminated cushioned vinyl sheet before the vinyl sheet is joined in a butt joint. The joined sheets are then rolled. The Pacione anchor sheets 9 are installed on the subfloor and attached to one another before the carpets pieces 15 are laid over the anchor sheets. The combined carpet and anchor sheets are not intended to be rolled.

For all of these reasons, claims 27, 38, 40 and 46 are allowable over MacLaine and the Webster's New World Dictionary in view of Pacione.

Claims 38 and 46

Claims 38 and 46 depend on claims 37 and 44, respectively. Therefore, they require the seamless resilient wear layer to be part of a surface covering or resilient flooring sheet which is in the form of a roll. The combination of MacLaine and Pacione does not teach a seamless wear layer overlying a seam in a surface covering or resilient flooring sheet which is in roll form. To yield the claimed invention, one would need to remove the wear layer of MacLaine, butt joint the MacLaine vinyl sheets, adhere a seamless wear layer to the butt joined sheets, and then roll the seamless wear layer coated and butt joined sheet. There is no teaching or suggestion to change the order of manufacturing steps in MacLaine. If the Examiner disagrees, she is respectfully requested to point out where the teaching or suggestion occurs.

Claims 40 and 46

Claims 40 and 46 are directed to a resilient flooring sheet comprising two resilient sheet elements and a seamless resilient wear layer. Therefore, the ASTM F141 definition for resilient floor applies, i.e. a sheet of which the wearing surface is non-textile. Attorney for Applicants does not understand the statement in the carryover paragraph on pages 8 and 9 of the latest

Office Action:

“Applicant ... fails to realize that the term ‘wear layer’ is directed the ‘resilient floor *covering*’ and not the resilient floor itself. The covering for a resilient flooring does need to be ‘nontextile’ however, the wearing surface of the resilient flooring does as defined by the definition of ‘resilient flooring’ as provided by the applicant.”

(Italics in original.) The terms “resilient flooring” and “resilient floor covering” are synonymous in the floor covering industry. Claims 40 and 46 are directed to a resilient flooring sheet and does not specify a covering for the resilient flooring sheet. The wear layer is adhered to and is a part of the resilient flooring sheet.

#### Claims 37, 39, 42 and 45

With respect to claims 37, 39, 42 and 45, the Examiner looks to the Webster’s New World Dictionary for a teaching of a scarf joint. Claims 39, 42 and 45 depend directly or indirectly on claims 40 or 44 and are allowable for the same reasons that claims 40 and 44 are allowable.

#### Claim 37

Independent claim 37 requires the seam to run the width of the rolled surface covering. The seam in MacLaine runs the length of the rolled sheet and not the width of the rolled sheet. Therefore, claim 37 is allowable over MacLaine and Webster’s New World Dictionary in view of Pacione.

#### Claim 44

With respect to claim 44, the Examiner takes the position at the top of page 5 of the latest Office Action that when the seam of MacLaine is made with a scarf joint, the gluing surfaces are in a plane generally parallel to the axis of the roll. This is incorrect. The butt joint seam of MacLaine runs along the length of the cushioned vinyl sheet. Therefore, when the sheet of MacLaine is wound on roll 74, as shown in Figures 6 to 8 of MacLaine, the seam is in a plane generally perpendicular to the axis of the roll. If the gluing surfaces were modified to form a

scarf joint, the gluing surfaces of one revolution of the roll would form a shape generally like a segment of a cone having the same axis as the roll. The gluing surfaces would be in a plane generally parallel to the axis of the roll if the scarf joint seams ran the width of the rolled sheet. Again, the seam in MacLaine runs the length of the rolled sheet. Therefore, claim 44 is allowable over MacLaine and Webster's New World Dictionary in view of Pacione.

**Rejection of claims 31 to 33 under 35 U.S.C. § 103(a) as being unpatentable over MacLaine and Webster's New World Dictionary and in further view of Ehrhart.**

Claims 31 to 33 have been amended to depend on claim 40. As discussed above MacLaine and the Webster's New World Dictionary do not teach or suggest the required seamless resilient wear layer that covers substantially the entire resilient flooring sheet, including the two resilient sheet elements and the seam, as required by claim 40.

Further, the composition of Ehrhart is not an adhesive. Column 1, lines 56 to 62, cited by the Examiner, teaches that a cyanoacrylate can be used as a seam coater or sealer, and not as an adhesive. Therefore, claims 31 to 33, which are directed to a specific adhesive, are allowable over the combination of MacLaine, the Webster's New World Dictionary and Ehrhart.

## CLAIMS APPENDIX

### Pending Claims

27. A surface covering comprising:  
two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;  
an adhesive interposed between the gluing surfaces; and  
a seamless resilient wear layer that covers substantially the entire surface covering, including the two elements and the seam formed by the adjacent gluing surfaces and the adhesive.
30. The resilient flooring sheet of claim 40, wherein the resilient flooring sheet is in the form of a roll.
31. The resilient flooring sheet of claim 40, wherein the adhesive is a radiation-curable adhesive.
32. The resilient flooring sheet of claim 40, wherein the adhesive is a UV-curable.
33. The resilient flooring sheet of claim 40, wherein the adhesive is a cyanoacrylate.
36. The surface covering of claim 27, wherein the surface covering is in the form of a roll, the gluing surfaces and adhesive forming a seam, with the seam being in a plane generally perpendicular to the axis of the roll, and the thickness of the seam being substantially no greater than the thickness of the elements.
37. A surface covering comprising:

two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent; and

an adhesive interposed between the gluing surfaces, the gluing surfaces and adhesive creating a seam in the form of a scarf joint,

wherein the surface covering is in the form of a roll, with the seam running the width of the roll.

38. The surface covering of claim 37, further comprising a seamless resilient wear layer that covers substantially the entire surface covering, including the two elements and the seam.

39. The resilient flooring sheet of claim 40, wherein the seam is a scarf joint.

40. A resilient flooring sheet comprising

two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;

an adhesive interposed between the gluing surfaces, the adhesive and gluing surfaces forming a seam; and

a seamless resilient wear layer that covers substantially the entire resilient flooring sheet, including the two elements and the seam.

41. The resilient flooring sheet of claim 40, wherein the seam is in a plane generally perpendicular to the axis of the roll, and the thickness of the seam is substantially no greater than the thickness of the elements.

42. The resilient flooring sheet of claim 41, wherein the seam is a scarf joint.

44. A resilient flooring sheet comprising



two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;

an adhesive interposed between the gluing surfaces, the gluing surfaces and adhesive forming a seam, wherein the seam is in a plane generally parallel to the axis of the roll.

45. The resilient flooring sheet of claim 44, wherein the seam is a scarf joint.

46. The resilient flooring sheet of claim 44, further comprising a seamless resilient wear layer that covers substantially the entire resilient flooring sheet, including the two elements and the seam.

47. The surface covering of claim 27, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

48. The surface covering of claim 36, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

49. The surface covering of claim 37, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

50. The resilient flooring sheet of claim 40, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

51. The resilient flooring sheet of claim 44, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

EVIDENCE APPENDIX

ASTM F141, which was submitted with the Preliminary Response filed March 4, 2994, is enclosed herewith.

RELATED PROCEEDINGS APPENDIX

None

CONCLUSION

The Section 112, second paragraph, rejection has been overcome by canceling Claim 48. Claims 27, 37 to 40, 42 and 44 to 46 are not obvious over MacLaine and Webster's New World Dictionary in view of Pacione. Claims 31 to 33 are not obvious over MacLaine and Webster's New World Dictionary in view of Ehrhart. The dependent claims are allowable, if the claim(s) from which they depend are allowable. Accordingly, all of the pending claims should be found allowable. Reversal of the rejections and allowance of the application is respectfully requested.

Respectfully submitted,

11/2/05  
Date

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April V. Fiedler



## Standard Terminology Relating to Resilient Floor Coverings<sup>1</sup>

This standard is issued under the fixed designation F 141; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon ( $\epsilon$ ) indicates an editorial change since the last revision or reapproval.

This standard has been approved for use by agencies of the Department of Defense. Consult the DuD Index of Specifications and Standards for the specific year of issue which has been adopted by the Department of Defense.

**abrasion**—a form of wear, in which a gradual removal of a flooring surface is caused by the frictional action of relatively fine hard particles. (1971)

**asphalt tile**—a floor surfacing unit composed of thermoplastic binder, asbestos fibers, mineral fibers, and pigments. The binder is essentially asphalt or hydrocarbon resins, or both, of coal tar and petroleum origin compounded with suitable plasticizers and stabilizers. (1972)

**below-grade**—a location for a floor structure which is in contact with the ground or with less than 18 in. of well ventilated space between the lower side of the floor and the ground, in which part or all of the floor is below ground level.

**cork tile**—a floor surfacing unit made from natural cork, thoroughly and uniformly bonded together. (1972)

**cushioned vinyl flooring**—any of the vinyl sheet floor coverings in which a foam layer is incorporated as part of the product thickness. (1974)

**dimensional stability**—the ability of a resilient flooring to retain its original dimensions during the service life of the product.

*Discussion*—This property is usually measured by: (1) *temperature-induced dimensional change*—the alteration in linear dimensions as a result of exposure to a significant variation in temperature followed by a return to original conditions; or (2) *moisture-induced dimensional change*—the alteration in linear dimensions as a result of exposure to a significant variation in moisture. (1977)

**flexibility**—that property of a resilient flooring which allows it to be deformed by bending or rolling without cracking, breaking or showing other permanent defects. (1972)

**gouge**—a form of wear, consisting of a wide groove deformation accompanied by material removal and penetrating a considerable distance below the immediate flooring surface. (1971)

**homogeneous vinyl flooring**—a floor surfacing unit in sheet or tile form composed of vinyl plastic binder and pigments with or without mineral fillers. The vinyl plastic binder is an essentially poly(vinyl chloride) resin, or a poly(vinyl chloride) copolymer resin compounded with suitable plasticizers and stabilizers. (1974)

**inlaid sheet flooring**—a floor surfacing material in which the pattern is formed by colored areas that extend from the

surface through to a backing, and that are bonded together and to the backing. (1974)

**latex patching compound**—a patching or leveling compound consisting of a latex (usually SBR rubber), portland cement and aggregate that is moisture, mildew and alkali resistant.

**linoleum**—a floor surfacing material composed of oxidized linseed oil, fossil, or other resins or rosin, or an equivalent oxidized oleoresinous binder, mixed with ground cork or wood flour, mineral filler and pigments, bonded to a burlap fiber or other suitable organic backing. It is made in either sheet or tile form. (1972)

**machine direction**—the direction in which a product moves through the manufacturing process. A specimen of resilient flooring is in the machine direction when it is aligned to be parallel to the direction in which it was processed.

**polymeric poured (seamless) floors**—a floor covering composed of polymeric material applied to the substrate in a liquid form alone, or in combination with mineral or plastic chips, pigments, desiccants, or fillers, which convert(s) to a thick built-up covering. (1973)

**printed sheet vinyl flooring**—a floor surfacing material in which the pattern is printed on a backing and protected with a wear layer of transparent or translucent vinyl plastic. (1974)

**resilient flooring**—an organic floor surfacing material made in sheet or tile form or formed in place as a seamless material of which the wearing surface is non-textile. The resilient floor covering classification by common usage includes, but is not limited to asphalt, cork, linoleum, rubber, vinyl, vinyl asbestos, and polymeric poured seamless floors. Resilient in this sense is used as a commonly accepted term, but does not necessarily define a physical property. (1972)

**rotovinyl**—a printed sheet vinyl flooring in which the pattern is printed by a rotogravure process. See also printed sheet vinyl flooring. (1974)

**rubber flooring**—a floor surfacing material in tile or sheet form, consisting of compounded natural rubber or synthetic rubber, or both, in combination with mineral fillers and pigments. (1972)

**scratching**—a form of wear, in which a minute groove-like break in a flooring surface is made by a rubbing contact with a tool or particle, the total deformation being confined to the most immediate surface level. (1971)

**scuff**—a form of wear, in which a mark, gall, roughness or other damage is caused by the rubbing of traffic bodies against a flooring surface and may involve deposition of a foreign material onto the flooring surface. (1971)

<sup>1</sup> These definitions are under the jurisdiction of ASTM Committee F-6 on Resilient Floor Coverings, and are the direct responsibility of Subcommittee F6.02 on Nomenclature.

Current edition approved January 25, 1991. Published March 1991. Originally published as F 141 - 71. Last previous edition F 141 - 90b.

**sheet, resilient flooring**—flexible resilient flooring, packaged in roll form, in which the length substantially exceeds the width.

*Discussion*—Sheet flooring is usually manufactured in widths of 6 to 15 ft. with rolls being up to 150 ft. long to allow seamless installation in small rooms and minimize seams in large rooms.

**solid vinyl flooring**—See homogeneous vinyl flooring. (1974)

**solid vinyl (homogeneous) tile**—a resilient floor covering composed of binder, fillers, and pigments compounded with suitable stabilizers and processing aids. The binder consists of one or more polymers or copolymers of vinyl chloride and plasticizers which comprise at least 34 % by weight of the tile. The polymers or copolymers of vinyl chloride comprise at least 60 % of the weight of the binder.

**subfloor**—that structural layer intended to provide support for design loadings which may receive resilient floor coverings directly if the surface is appropriate or indirectly via an underlayment if its surface is not suitable. (1983)

**subfloor underlayment**—a structural floor system in which the upper surface is designed and constructed for the direct installation of resilient floor coverings.

**terrazzo**—a mosaic flooring made by embedding marble, onyx, granite, or glass in portland cement which is poured in place, then polished.

**tile, resilient flooring**—resilient flooring which is packaged in flat pieces which can be installed as individual units.

*Discussion*—Tiles are usually square, with sides of 9 to 24 in.; most

commonly 12 by 12 in. They can also be long and narrow, such as 4 by 36 in. (sometimes called "plank").

**underlayment**—that layer of material usually installed on or over a subfloor that provides a surface suitable to receive resilient floor coverings. (1983)

**vinyl asbestos tile**—a floor surfacing unit composed of vinyl plastic binder, asbestos fibers, mineral fillers, and pigments. The vinyl plastic binder is an essentially poly(vinyl chloride) resin or a poly(vinyl chloride) copolymer resin compounded with suitable plasticizers and stabilizers. (1972)

**vinyl composition tile**—a resilient floor covering composed of binder, fillers, and pigments. The binder shall consist of one or more resins of poly (vinyl chloride), or vinyl chloride copolymers, or both, compounded with suitable plasticizers and stabilizers. Other polymeric resins may be incorporated as part of the binder.

**wear**—the accumulative and integrative action of all the deleterious mechanical influences encountered in use which tend to impair a material's serviceability. Such influences include, but are not limited to abrasion, scratching, gouging and scuffing. (1971)

**wear layer**—the portion of a resilient floor covering that contains or protects the pattern effect. The wear layer does not include temporary finishes or maintenance coatings. (1979)

*This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, 1916 Race St., Philadelphia, PA 19103.*

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:	)	
	)	
Kraft et al.	)	Examiner: Rhee, Jane J.
	)	
Serial No.: 09/917,360	)	Art Unit: 1745
	)	
Filed: July 27, 2001	)	Confirmation No.: 9869
	)	
For: FORMING NEW SHEET	)	Customer No.: 00112
FLOORING WIDTHS BY	)	
CONTROLLING APPLICATION	)	Docket No.: 0105
OF A BONDING AGENT	)	

**AMENDMENT AFTER NOTICE OF APPEAL**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This is in response to the Advisory Action mailed July 21, 2005. An Appeal Brief is filed herewith. Please amend the above-identified application as follows:

**Amendments to the Specification:** None

**Amendments to the Claims** begin on page 2 of this paper.

**Amendments to the Drawings:** None

**Remarks/Arguments** begin on page 6 of this paper.

**Amendments to the Claims:**

A detailed listing of all the claims that are, or were, in the application is presented below. Current amendments to the claims, including additions being shown by underlining and deletions being shown by strikethrough or double brackets, are expressed in the listing.

**Listing of Claims:**

Claims 1 to 26 (Canceled)

27. (Previously Presented) A surface covering comprising:

two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;

an adhesive interposed between the gluing surfaces; and

a seamless resilient wear layer that covers substantially the entire surface covering, including the two elements and the seam formed by the adjacent gluing surfaces and the adhesive .

Claims 28 and 29 (Canceled).

30. (Previously Presented) The resilient flooring sheet of claim 40, wherein the resilient flooring sheet is in the form of a roll.

31. (Previously Presented) The resilient flooring sheet of claim 40, wherein the adhesive is a radiation-curable adhesive.

32. (Previously Presented) The resilient flooring sheet of claim 40, wherein the adhesive is a UV-curable.



33. (Previously Presented) The resilient flooring sheet of claim 40, wherein the adhesive is a cyanoacrylate.

Claims 34 and 35 (Canceled)

36. (Previously Presented) The surface covering of claim 27, wherein the surface covering is in the form of a roll, the gluing surfaces and adhesive forming a seam, with the seam being in a plane generally perpendicular to the axis of the roll, and the thickness of the seam being substantially no greater than the thickness of the elements.

37. (Previously Presented) A surface covering comprising:  
two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent; and  
an adhesive interposed between the gluing surfaces, the gluing surfaces and adhesive creating a seam in the form of a scarf joint,  
wherein the surface covering is in the form of a roll, with the seam running the width of the roll.

38. (Previously Presented) The surface covering of claim 37, further comprising a seamless resilient wear layer that covers substantially the entire surface covering, including the two elements and the seam.

39. (Previously Presented) The resilient flooring sheet of claim 40, wherein the seam is a scarf joint.

40. (Previously Presented) A resilient flooring sheet comprising  
two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;  
an adhesive interposed between the gluing surfaces, the adhesive and gluing surfaces forming a seam; and  
a seamless resilient wear layer that covers substantially the entire ~~floor-covering~~ resilient flooring sheet, including the two elements and the seam.

41. (Previously Presented) The resilient flooring sheet of claim 40, wherein the seam is in a plane generally perpendicular to the axis of the roll, and the thickness of the seam is substantially no greater than the thickness of the elements.

42. (Previously Presented) The resilient flooring sheet of claim 41, wherein the seam is a scarf joint.

Claim 43 (Canceled).

44. (Previously Presented) A resilient flooring sheet comprising  
two resilient sheet elements having substantially the same structure, each element comprising (a) a first major surface, (b) a second major surface, and (c) a gluing surface interposed between the first major surface and the second major surface, the gluing surfaces of the two elements being adjacent;  
an adhesive interposed between the gluing surfaces, the gluing surfaces and adhesive forming a seam, wherein the seam is in a plane generally parallel to the axis of the roll.

45. (Previously Presented) The resilient flooring sheet of claim 44, wherein the seam is a scarf joint.

46. (Previously Presented) The resilient flooring sheet of claim 44, further comprising a seamless resilient wear layer that covers substantially the entire resilient flooring sheet, including the two elements and the seam.

47. (Previously Presented) The surface covering of claim 27, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

Claim 48. (Canceled).

49. (Previously Presented) The surface covering of claim 37, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

50. (Previously Presented) The resilient flooring sheet of claim 40, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

51. (Previously Presented) The resilient flooring sheet of claim 44, wherein no portion of the gluing surfaces is perpendicular to the first major surface.

**REMARKS/ARGUMENTS**

Claims 1 to 26, 28, 29, 34, 35, 43 and 48 have been canceled. Claims 27, 30 to 33, 36 to 42, 44 to 47 and 49 to 51 remain in this application.

Claim 48 has been canceled to remove an issue on appeal and does not affect the scope of any other pending claim. The remaining claims were previously presented.

Therefore, entry of this amendment is respectfully requested.

Respectfully submitted,

11/2/05  
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